

AMENDED IN SENATE SEPTEMBER 1, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1659

Introduced by Assembly Member Butler
(Principal coauthor: Senator Price)

February 14, 2012

~~An act to amend Section 3509 of the Government Code, relating to public employment.~~ *An act to amend Section 18894 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1659, as amended, Butler. ~~Public Employment Relations Board: powers and duties.~~ *Voluntary contributions: Arts Council Fund.*

The Personal Income Tax Law authorizes taxpayers to contribute amounts in excess of their tax liability for the support of a specified fund, including the Arts Council Fund. Existing law provides that these provisions for contributions to the Arts Council Fund remain in effect only until January 1 of the 5th taxable year following the first appearance of the Arts Council Fund on the tax return, except that annually, commencing in the second calendar year of the fund appearing on the tax return, if the Franchise Tax Board determines that the amount of contributions estimated to be received during a calendar year will not equal or exceed the minimum contribution amount, as defined, for the calendar year, these provisions are repealed with respect to taxable years beginning on or after January 1 of that calendar year. Existing law requires the Franchise Tax Board to annually determine the amount of the minimum contribution and whether the amount of contributions

equals or exceeds the minimum contribution amount by September 1 of the 2nd calendar year.

This bill would delay the commencement date of the requirement that the Franchise Tax Board determine the amount of the minimum contribution and whether the amount of contributions equals or exceeds the minimum contribution amount to September 1 of the 3rd calendar year and would make related changes.

This bill would state that it is the intent of the Legislature that any determination by the Franchise Tax Board with respect to the contributions estimated to be received for the 2012 calendar year under these provisions, made prior to the amendments made by this act, shall not be given effect.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law establishes the Public Employment Relations Board (PERB), which is charged with administering various collective bargaining provisions. Under existing law, PERB has the power and duty, among others, to order elections, conduct any election, adopt rules, investigate an unfair practice charge, and to determine whether the charge is justified and the appropriate remedy for the unfair practice.~~

~~Existing law also grants the employee relations commissions for the County of Los Angeles and the City of Los Angeles, notwithstanding the above provisions, the power and responsibility to take actions on recognition, unit determinations, elections, and all unfair practices, and to issue determinations and orders as the employee relations commissions deem necessary.~~

~~This bill would grant the employee relations commissions for the County of Los Angeles and the City of Los Angeles the power and authority to take the actions specified above only if those commissions and their respective staff are independent of county and city management, as described, and the commissions are not funded within the same budget item that funds any other public office, department, or agency within the county or city.~~

~~Vote: majority $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.~~

The people of the State of California do enact as follows:

1 *SECTION 1. Section 18894 of the Revenue and Taxation Code*
 2 *is amended to read:*

18894. (a) Except as otherwise provided in subdivision (b), this article shall remain in effect only until January 1 of the fifth taxable year following the first appearance of the Arts Council Fund on the personal income tax return, and as of ~~that date~~ *December 1 of that year* is repealed, unless a later enacted statute, that is enacted before the applicable date, deletes or extends that date.

(b) (1) By September 1 of the ~~second~~ *third* calendar year and each subsequent calendar year that the Arts Council Fund appears on the tax return, the Franchise Tax Board shall do all of the following:

(A) Determine the minimum contribution amount required to be received during the next calendar year for the fund to appear on the tax return for the taxable year that includes that next calendar year.

(B) Determine whether the amount of contributions estimated to be received during the calendar year will equal or exceed the minimum contribution amount determined by the Franchise Tax Board for the calendar year pursuant to subparagraph (A). The Franchise Tax Board shall estimate the amount of contributions to be received by using the actual amounts received and an estimate of the contributions that will be received by the end of that calendar year.

(2) If the Franchise Tax Board determines that the amount of the contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount for the calendar year, this article ~~is repealed~~ *shall be inoperative* with respect to taxable years beginning on or after January 1 of that calendar year *and shall be repealed on December 1 of that year*.

(3) For purposes of this section, the minimum contribution amount for a calendar year means two hundred fifty thousand dollars (\$250,000) for the ~~second~~ *third* calendar year after the first appearance of the Arts Council Fund on the personal income tax return or the ~~adjusted~~ minimum contribution amount *as* adjusted pursuant to subdivision (c).

(c) For each calendar year, beginning with the ~~third~~ *fourth* calendar year after the first appearance of the Arts Council Fund on the personal income tax return, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the

1 minimum contribution amount specified in subdivision (b) as
2 follows:

3 (1) The minimum estimated contribution amount for the calendar
4 year shall be an amount equal to the product of the minimum
5 ~~estimated~~ contribution amount for the *prior* calendar year
6 multiplied by the inflation factor adjustment as specified in
7 subparagraph (A) of paragraph (2) of subdivision (h) of Section
8 17041, rounded off to the nearest dollar.

9 (2) The inflation factor adjustment used for the calendar year
10 shall be based on the figures for the percentage change in the
11 California Consumer Price Index for all items received on or before
12 August 1 of the calendar year pursuant to paragraph (1) of
13 subdivision (h) of Section 17041.

14 (d) Notwithstanding the repeal of this article, any contribution
15 amounts designated pursuant to this article prior to its repeal shall
16 continue to be transferred and disbursed in accordance with this
17 article as in effect immediately prior to that repeal.

18 *SEC. 2. It is the intent of the Legislature that any determination*
19 *by the Franchise Tax Board under paragraph (1) of subdivision*
20 *(b) of Section 18894 of the Revenue and Taxation Code with*
21 *respect to the contributions estimated to be received for the 2012*
22 *calendar year under the provisions of Section 18894 of the Revenue*
23 *and Taxation Code, made prior to the amendments made to Section*
24 *18894 of the Revenue and Taxation Code by Section 1 of this act,*
25 *shall not be given effect.*

26 *SEC. 3. This act is an urgency statute necessary for the*
27 *immediate preservation of the public peace, health, or safety within*
28 *the meaning of Article IV of the Constitution and shall go into*
29 *immediate effect. The facts constituting the necessity are:*

30 *To ensure that taxpayers continue to contribute to the Arts*
31 *Council Fund, it is necessary that this act take effect immediately.*

32 ~~SECTION 1. Section 3509 of the Government Code is amended~~
33 ~~to read:~~

34 ~~3509. (a) The powers and duties of the board described in~~
35 ~~Section 3541.3 shall also apply, as appropriate, to this chapter and~~
36 ~~shall include the authority as set forth in subdivisions (b) and (c).~~
37 ~~Included among the appropriate powers of the board are the power~~
38 ~~to order elections, to conduct any election the board orders, and~~
39 ~~to adopt rules to apply in areas where a public agency has no rule.~~

1 ~~(b) A complaint alleging any violation of this chapter or of any~~
2 ~~rules and regulations adopted by a public agency pursuant to~~
3 ~~Section 3507 or 3507.5 shall be processed as an unfair practice~~
4 ~~charge by the board. The initial determination as to whether the~~
5 ~~charge of unfair practice is justified and, if so, the appropriate~~
6 ~~remedy necessary to effectuate the purposes of this chapter, shall~~
7 ~~be a matter within the exclusive jurisdiction of the board, except~~
8 ~~that in an action to recover damages due to an unlawful strike, the~~
9 ~~board shall have no authority to award strike-preparation expenses~~
10 ~~as damages, and shall have no authority to award damages for~~
11 ~~costs, expenses, or revenue losses incurred during, or as a~~
12 ~~consequence of, an unlawful strike. The board shall apply and~~
13 ~~interpret unfair labor practices consistent with existing judicial~~
14 ~~interpretations of this chapter.~~

15 ~~(c) The board shall enforce and apply rules adopted by a public~~
16 ~~agency concerning unit determinations, representation, recognition,~~
17 ~~and elections.~~

18 ~~(d) Notwithstanding subdivisions (a) to (c), inclusive, the~~
19 ~~employee relations commissions established by, and in effect for,~~
20 ~~the County of Los Angeles and the City of Los Angeles pursuant~~
21 ~~to Section 3507 shall have the power and responsibility to take~~
22 ~~actions on recognition, unit determinations, elections, and all unfair~~
23 ~~practices, and to issue determinations and orders as the employee~~
24 ~~relations commissions deem necessary, consistent with and~~
25 ~~pursuant to the policies of this chapter, only if the commissions~~
26 ~~and their respective staff are independent of county and city~~
27 ~~management, and the commissions are not funded within the same~~
28 ~~budget item that funds any other public office, department, or~~
29 ~~agency within the county or city. Independence from city and~~
30 ~~county management shall include, but not be limited to, all of the~~
31 ~~following:~~

32 ~~(1) The commission, and not the city or county management,~~
33 ~~shall be the custodian of records of the commission.~~

34 ~~(2) Once a budget is allocated to the commission, the~~
35 ~~commission shall have the sole discretion on how to allocate its~~
36 ~~funds.~~

37 ~~(3) The commission, and not the city or county management,~~
38 ~~shall have control over all employment issues related to its staff~~
39 ~~and hearing officers.~~

~~(e) Notwithstanding subdivisions (a) to (e), inclusive, consistent with, and pursuant to, the provisions of Sections 3500 and 3505.4, superior courts shall have exclusive jurisdiction over actions involving interest arbitration, as governed by Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, when the action involves an employee organization that represents firefighters, as defined in Section 3251.~~

~~(f) This section shall not apply to employees designated as management employees under Section 3507.5.~~

~~(g) The board shall not find it an unfair practice for an employee organization to violate a rule or regulation adopted by a public agency if that rule or regulation is itself in violation of this chapter. This subdivision shall not be construed to restrict or expand the board's jurisdiction or authority as set forth in subdivisions (a) to (e), inclusive.~~

~~CORRECTIONS:~~

~~Heading—Page 1.~~